

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of ) MM Docket No. 94-92  
BOARD OF REGENTS, )  
STATE OF FLORIDA, ACTING FOR AND ON ) File No. BPED-930114MA  
BEHALF OF THE UNIVERSITY OF FLORIDA )  
MARION COMMUNITY RADIO, INC. ) File No. BPED-930413MA  
For Construction Permit for a New )  
Noncommercial Educational Station on )  
Channel 215A in Crystal River, Florida )

To: The Honorable Joseph P. Gonzalez  
Administrative Law Judge

DOCKET FILE COPY ORIGINAL

Joint Request for Approval of Settlement Agreement

Marion Community Radio, Inc. ("Marion") and The Board of Regents, State of Florida, Acting for and on Behalf of the University of Florida ("University of Florida"), by their Counsel, hereby respectfully request, pursuant to Section 311(c)(2) of the Communications Act of 1934, as amended, that the Settlement Agreement entered into by the parties, a copy of which is attached hereto, be approved, that the above-captioned application of the University of Florida be dismissed and that the above-captioned application of Marion be approved. In support of this request, the following is respectfully submitted for the Presiding Judge's consideration.

1. This proceeding involves the mutually-exclusive applications of Marion and the University of Florida for authority to construct and operate a new FM station on Channel 251A in Crystal River, Florida. The applications were designated

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for comparative hearing and are presently pending before the Presiding Judge in MM Docket No. 94-92.

2. In order to resolve the conflict between the applications, the parties have entered into a Settlement Agreement, a copy of which is attached hereto as Appendix A. The Settlement Agreement between Marion and the University of Florida provides for, inter alia: (a) the dismissal with prejudice of the University of Florida application; and, (b) payment of \$4,000.00 to the University of Florida by Marion under certain terms and conditions delineated in the Settlement Agreement.

3. Pursuant to Paragraph 13 of the Settlement Agreement, the parties affirm, under the penalty of perjury, that: (a) their respective applications were not filed with the Commission for the purpose of reaching or carrying out a settlement; (b) the Settlement Agreement fully discloses all the terms of their settlement; and, (c) that the parties believe the Settlement Agreement will serve the public interest by expediting the implementation of a new FM service to Crystal River, Florida and by conserving the Commission's resources.

4. Attached hereto as Appendix B are Declarations evidencing the reasonable and prudent out-of-pocket expenses expended by the University of Florida in prosecution of its Crystal River, Florida Application. The total expenses are as follows:

<u>Expense</u>	<u>Total</u>
Engineering Fees	\$2,200.00
Legal Fees	\$3,368.70
<u>Total:</u>	\$5,568.70

Thus, the parties believe that they have complied with the requirements of Section 311(c)(2) of the Communications Act of 1934, as amended, and Section 73.3525 of the Commission's Rules and Regulations.

Wherefore, based on the foregoing, the parties respectfully request that the subject Joint Request be approved, that the application of the University of Florida be dismissed with prejudice and that the application of Marion be granted.

Respectfully submitted,  
Marion Community Radio, Inc.

By: Stephen C. Simpson  
Stephen C. Simpson  
Its Attorney

1090 Vermont Avenue, N.W.  
Suite 800  
Washington, D.C. 20005  
(202) 408-7035

Board of Regents, State of  
Florida, Acting for and  
on Behalf of the University  
of Florida

By: Robert G. Woods  
Robert Woods

Schwartz, Woods & Miller  
1350 Connecticut Avenue, N.W.  
Suite 300  
Washington, D.C. 20036

**Attachment A**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of this 4th day of October, 1994 by and between Marion Community Radio, Inc. ("Marion") and Board of Regents, State of Florida, Acting for and on behalf of the University of Florida ("University") (collectively referred to herein as the "Parties").

### WITNESSETH:

WHEREAS, the parties have filed mutually-exclusive applications with the Federal Communications Commission ("FCC") seeking FCC authorization to operate a new noncommercial FM broadcast station on Channel 215A at Crystal River, Florida.

WHEREAS, Marion has offered to pay University in return for dismissal of University's application contingent upon the fulfillment of certain conditions specified herein;

WHEREAS, University is willing to request dismissal of its application in return for the agreed upon payment and upon the fulfillment of certain conditions specified herein; and

WHEREAS, the parties believe that settlement of this proceeding would be in the public interest as it would expedite the provision, on a permanent basis, of FM broadcast service on Channel 215A at Crystal River, Florida and would obviate the expenditure of public and private resources in further litigation as to the comparative merits of the competing applications or the parties;

NOW THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, the parties agree as follows:

1. DISMISSAL OF APPLICATION. Subject to the approval of this Agreement by the FCC or its delegatee, University shall dismiss with prejudice its pending construction permit application for a new FM broadcast station in Crystal River, Florida.

2. CONSIDERATION FOR DISMISSAL OF APPLICATION.

(a) In consideration for the dismissal of University's application with prejudice, Marion agrees to pay University the sum of Four Thousand Dollars (\$4,000.00).

(b) Payment of the consideration set forth in Subparagraph (a) above shall be made by a certified or bank cashier's check made payable to the order of University of Florida Foundation.

The check shall be delivered to a location to be designated by University.

(c) Payment of the consideration set forth in subparagraph (a) above shall be made within ten (10) business days following the date when the FCC's dismissal of University's application and the FCC's grant of Marion's mutually-exclusive application have both become Final Orders (i.e., pursuant to Section 1.302 of the Commission's Rules). For the purposes of this Agreement, a "Final Order" means action by the FCC which is no longer subject to administrative or judicial

reconsideration or review under the Communications Act of 1934, as amended, and the FCC's rules and regulations. It is agreed by the parties that, absent any challenge, appeal or request for reconsideration or review, an order granting Marion's application will become "final" forty (40) days after the text thereof is released to the public.

3. BEST EFFORTS. The parties to this Agreement agree to cooperate fully with each other in good faith and to use their individual and joint best efforts to: (a) obtain FCC approval of this Agreement; (b) cause the dismissal with prejudice of University's application; (c) secure the grant of Marion's mutually-exclusive application; and (d) take such action as may be necessary or appropriate to effectuate the purposes of this Agreement. The parties further warrant and covenant that their respective partners, officers, directors, shareholders and agents will observe and honor the mutual commitment set forth in the preceding sentence.

4. BINDING EFFECT. Each party represents to the other that (a) such party bears full right and legal power to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (b) such party is not under any restrictions, contractual or otherwise, which are inconsistent with this Agreement or which would prevent or preclude such party from entering into this Agreement or from performing such party's obligations hereunder; (c) the individual signing this Agreement on such party's behalf has full authority to do so; and (d) this

Agreement is a legally binding obligation of such party and is enforceable against such party in accordance with its terms. This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

5. DEFAULT. In the event of default in the performance of the obligations imposed upon either party to this Agreement, the other party shall be entitled to pursue any remedies for redress on injuries from such default that are available at law or in equity or otherwise including reasonable attorney's fees and court costs incurred in enforcing this Agreement.

6. COMMISSION APPROVAL. If the FCC or its delegatee for any reason fails to approve this Agreement within twelve (12) months after the submission of a joint petition requesting such approval, then either party may terminate this Agreement upon ten (10) days written notice to the other, following which the University shall be entitled to resume prosecution of its application.

7. TERMINATION. In the event this Agreement is terminated for any reason, it is expressly agreed that neither party shall rely upon this Agreement, or any provision hereof, in order to claim a comparative advantage in any subsequent litigation in the Crystal River, Florida proceeding.

8. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding and agreements between the parties hereto. All prior negotiations, agreements, rights, and obligations between



the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings, agreements, rights, or obligations other than those expressly set forth herein. No modification, amendment, or waiver or any provision of this Agreement, in whole or in part, will be valid unless in writing signed by a duly authorized representative of the party to be charged with such modification, amendment, or waiver.

9. NOTICE. Any notice required by or relating to this Agreement shall be deemed given when mailed by registered or certified mail, postage prepaid, to counsel of record in the Crystal River, Florida proceeding for the respective party, or to such other address as the party should designate by written notice to the other party.

10. COUNTERPART. This Agreement may be executed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall not be legally binding on either party until it has been duly executed by both parties hereto.

11. HEADINGS. The headings contained in this Agreement have been inserted for the purposes of convenience only and shall be given no effect in the construction or interpretation of this Agreement.

12. GOVERNING LAW. This Agreement has been made pursuant to, and shall be governed and construed in accordance with, the laws of the State of Florida (other than the choice of law rules used in that jurisdiction), the Communications Act of 1934, as

amended, and the FCC's rules and regulations.

13. SECTION 73.3525(a) ATTESTATION. All signatories to this Agreement hereby affirm under the penalty of perjury that, consistent with Section 73.3525(a) of the Commission's Rules and Regulations: (1) their respective applications were not filed with the Commission for purposes of reaching or carrying out settlement agreements; (2) the Agreement fully discloses all terms of the settlement between the parties; and, (3) they believe that this Agreement, after Commission approval, will serve the public interest because it will expedite a new FM service in Crystal River, Florida and will conserve the resources of the parties and the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by the signatures of their duly authorized representatives as affixed below.


Board of Regents, State of Florida,  
Acting for and on Behalf of the  
University of Florida

Date: 10/4/94

By:   
Richard Lehner

Marion Community Radio, Inc.

Date: 10/4/94

By:   
Brad Dinkins

**Attachment B**

**DECLARATION OF ROBERT GEHMAN, JR.**

I, Robert Gehman, Jr., hereby declare under penalty of perjury that:

1. I am President of Kessler and Gehman Associates, Inc., which is the consulting engineering firm for the Board of Regents, State of Florida, Acting for and on behalf of the University of Florida, in the preparation of the engineering portions of its application in File No. BPED-930114MA for authority to construct a new noncommercial educational FM station on Channel 215A in Crystal River, Florida.

2. Our fees and expenses in connection with these services totalled \$2200.00.

The foregoing statement is true and correct. Executed this 6th day of October, 1994.

By: 

Robert Gehman, Jr., P. E.

## DECLARATION OF ROBERT A. WOODS

I, Robert A. Woods, hereby declare under penalty of perjury that:

1. I am a partner in the law firm of Schwartz, Woods & Miller, which has represented the Board of Regents, State of Florida, Acting for and on behalf of the University of Florida (University of Florida) in the preparation, filing and prosecution of its application in File No. BPED-930114MA for authority to construct a new noncommercial educational FM station on Channel 215A in Crystal River, Florida.

2. Our fees and expenses in connection with these services to the University of Florida to date have totalled \$3,368.70.

The foregoing statement is true and correct. Executed this 6th day of October, 1994.

By: Robert A. Woods  
Robert A. Woods

Certificate of Service

I hereby certify that a copy of the foregoing document was this 11th day of October, 1994 sent by First Class U.S. mail, postage prepaid, to the following:

The Honorable Joseph P. Gonzalez \*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W.  
Room 224  
Washington, D.C. 20554

Robert Zauner, Esq. \*  
Hearing Division, Mass Media Bureau  
Federal Communications Commission  
Room 7212  
2025 M Street, N.W.  
Washington, D.C. 20036

Robert A. Woods, Esq.  
Steven C. Schaffer, Esq.  
Schwartz, Woods & Miller  
Suite 300  
1350 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Stephen C. Simpson

\* By Hand Delivery.